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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/725,520

12/03/2003

Robert Petit

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466

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05/08/2006

YOUNG & THOMPSON  
745 SOUTH 23RD STREET  
2ND FLOOR  
ARLINGTON, VA 22202

EXAMINER

RUNNING, RACHEL A

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/725,520

**Applicant(s)**

PETIT, ROBERT

**Examiner**

Rachel A. Running

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/03/2003</u> .  | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 3 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 3 discloses two different tufts, each forming a sheaf and emerging from the mount along two different surfaces, which can be found in claim 1, lines 9-18.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. Some examples include: a broad range or limitation followed by linking terms (e.g., preferably, maybe, for instance, especially, typically) and a narrow range or limitation within the broad range or limitation which is considered indefinite since the resulting claim does not

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clearly set forth the metes and bounds of the patent protection desired. Others examples include dimensions such as 3.E wherein E is not specifically defined. These are just some of the innumerable errors encountered. Applicant should carefully reread the claims and correct all errors therein.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-7, 10, 13, 14, and 16-19, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumler (U.S. Patent No. 6,312,182). Dumler discloses a rigid mount (2) that serves as a grip, having two different application surfaces comprising tufts (4) made of a flexible material see Figure 1 (column 2, lines 45-55). The tufts comprise a base (5) that is anchored to the mount, wherein the mount forms a two-dimensional object see Figure 6. The two different tufts form a sheaf along two different surfaces, wherein the surfaces are circular see Figures 5 and 6. The surfaces are contiguous see Figure 5 (column 3, lines 4-7). The different surfaces of the tufts are spaced apart from each other see Figure 9. The two surfaces of the tufts are in the same plane, which is perpendicular to the medium plane see Figure 6. The tufts are made of hair that has the same nature and texture (column 2, lines 50-58).

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The mount includes cavities wherein the tufts are anchored and bonded (column 2, lines 5-10). Dumlér does not disclose the two-dimensional object having a larger dimension  $D$  being less than 50 mm, with a thickness of less than  $0.3 D$  (claim 1), the mount having a maximum a thickness of 10 mm and each sheaf having a length of  $0.5 D$  to  $1.5 D$ , wherein  $D$  is less than 50 mm (claim 2), the mounting surfaces being oblong with a length from 5 to 20 mm and a width of 1 to 5 mm (claim 4), the mounting surfaces being circular with a diameter of 2 to 10 mm (claim 5), the distance between the mounting surfaces are from  $0.2 D$  to  $0.8 D$ , wherein  $D$  is less than 50 mm (claim 7), and the width of each application surface being less than  $D/2$ , wherein  $D$  is less than 50 mm (claim 17). Regarding claim 1, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a larger dimension  $D$  being less than 50 mm, with a thickness of less than  $0.3 D$ , since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Regarding claim 2, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the mount with a maximum thickness of 10 mm and each sheaf with a length of  $0.5 D$  to  $1.5 D$ , since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Regarding claim 4, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the mounting surfaces be oblong with a length of 5 to 20 mm, and a width of 1 to 5 mm since it has been held that where the general conditions

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of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Regarding claim 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the circular mounting surfaces have a diameter of 2 to 10 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Regarding claim 7, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the distance between the mounting surfaces be from 0.2 D to 0.8 D, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Regarding claim 17, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the width of each application surface be less than  $D/2$ , since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

6. Claims 1, 2 and 15, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Perez (U.S. Patent No. 4,128,911). Perez discloses a rigid mount (3) that serves as a gripping means, having two different application surfaces comprising tufts (7) made of hair with different texture see Figure 1 (column 2, lines 4-10). The tufts comprise a base (3) that is anchored to the mount, wherein the mount forms a two-dimensional object see Figure 1. The two different tufts form a sheaf along

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two different surfaces, wherein the surfaces are circular see Figure 2. Perez does not disclose the two-dimensional object having a larger dimension  $D$  less than 50 mm, with a thickness of less than  $0.3 D$  (claim 1), and the mount having a maximum thickness of 10 mm and each sheaf having a length of  $0.5 D$  to  $1.5 D$  (claim 2). Regarding claim 1, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the two-dimensional object having a larger dimension  $D$  be less than 50 mm, with a thickness of less than  $0.3 D$ , since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Regarding claim 2, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the mount with a maximum thickness of 10 mm and each sheaf with a length of  $0.5 D$  to  $1.5 D$ , since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

7. Claims 1, 7-9, 11, and 12, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons (U.S. Patent No. 4,554,699). Simmons discloses a rigid mount (12) that serves as a gripping means, having two different application surfaces comprising tufts (18) made of a flexible material see Figure 1 (column 2, lines 10-20). The tufts comprise a base (14) that is anchored to the mount, wherein the mount forms a two-dimensional object see Figure 1. The two different tufts form a sheaf along the two different surfaces see Figure 1. The different surfaces are spaced apart see Figure 1. The sheaves are formed at an angle when the application

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surface is bent; the surfaces are non-contiguous and are spaced apart by a distance, wherein the corresponding application surfaces are contiguous see Figure 6. The sheaves are formed at an angle when the application surface is bent, however, the surfaces are non-contiguous and are spaced apart by a distance, wherein the corresponding application surface are non-contiguous when the device is not bent see Figure 1. The surfaces are in different planes depending on how the user bends the mount; the surfaces can be perpendicular to the medium plane see Figure 6. Simmons does not disclose the two-dimensional object have a larger dimension D being less than 50 mm, with a thickness of less than 0.3 D (claim 1), the distance from one mounting surface to the other mounting surface two being from 0.2 D to 0.8 D, wherein D is less than 50 mm (claim 7), the sheaves have a maximum angle of aperture greater than zero and a minimum angle of aperture greater than zero (claims 8 and 9), and the mounting surfaces are in different planes forming an angle that is equal to  $150^{\circ} \pm 25^{\circ}$  (claim 11). Regarding claim 1, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the two-dimensional object having a larger dimension D be less than 50 mm, with a thickness of less than 0.3 D, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Regarding claim 7, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the distance of one mounting surface to the other mounting surface be from 0.2 D to 0.8 D, since it has been held that where the general conditions of a claim are disclosed in the prior art,



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discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Regarding claims 8 and 9, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the sheaves with a maximum angle of aperture greater than zero and a minimum angle of aperture greater than zero, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Regarding claim 11, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the mounting surfaces in different planes that form an angle equal to  $150^{\circ} \pm 25^{\circ}$ , since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

8. Claims 20 and 21, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumler as applied to claim 1 above, and further in view of Gueret (U.S. Patent No. 6,073,634). Dumler discloses the claimed invention except for a case with one pot of compact powder, a lid with a mirror, and the width of the tuft and the width of the pot has a ratio that is between 0.7 and 1.1. Gueret teaches a brush with case (100) that includes a pot of compact powder (107) and a lid (106) with a mirror (117) see Figure 7 (column 11, lines 30-40). Regarding claim 20, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the brush of Dumler include a case as taught by Gueret in order to have the brush and cosmetic readily available for the user. Regarding claim 21, it would have been

obvious to one having ordinary skill in the art at the time the invention was made to have the width of the tuft and the width of the pot have a ratio that is between 0.7 and 1.1, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

9. Claims 22-25, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumler in view of Gueret as applied to claim 20 above, and further in view of Ferrari (U.S. Patent No. 5,086,791). The combination of Dumler and Gueret disclose the claimed invention except for the compact product having two different compacted products that form a single block of powder and are separated along a line of demarcation (claims 22 and 23), the compacted products have a total contact surface with an average dimension taken perpendicularly to the line of demarcation such that the ratio of the width of the tuft and the width of the pot is between 0.7 and 1.1 (claim 24), and the contact surface of the pot forms an angle close to  $180^{\circ} \pm 45^{\circ}$  (claim 25). Ferrari teaches a single block of powder that has two different products (11,12) that are separated along a line of demarcation, and the contact surface is formed at an angle see Figure 19. Regarding claims 22 and 23, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the combination of Dumlar and Gueret include a single block of powder that has two different products that are separated along a line of demarcation, and have a contact surface that is formed at an angle as taught by Ferrari in order to allow the user to easily blend multiple products together. Regarding claim 24, it would have been obvious to one having ordinary skill in

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the art at the time the invention was made to have the compacted products with a total contact surface area dimension taken perpendicularly to the line of demarcation such that the ratio of the width of the tuft and the width of the pot is between 0.7 and 1.1, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Regarding claim 25, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the contact surface of the pot form an angle close to  $180^{\circ} \pm 45^{\circ}$ , since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

### ***Conclusion***

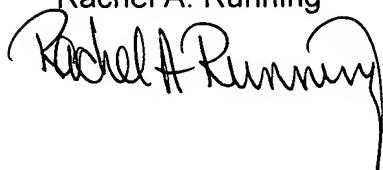
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel A. Running whose telephone number is (571) 272-1917. The examiner can normally be reached on Monday-Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

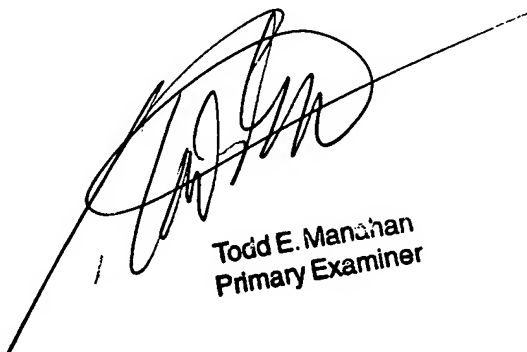
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Rachel A. Running

A handwritten signature in black ink, appearing to read "Rachel A. Running", written in a cursive style.

Todd E. Manahan  
Primary Examiner

A handwritten signature in black ink, appearing to read "Todd E. Manahan", written in a cursive style. The signature is positioned above the printed name and title.